

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DENNIS NAGLE, )  
Plaintiff, )  
 )  
v. ) Civil Action No. 08-673  
 )  
MICHAEL J. AS TRUE, )  
Defendant. )

REPORT AND RECOMMENDATION

I. Recommendation:

It is respectfully recommended that the defendant's Motion for Change of Venue (Docket No.2) be granted and the instant complaint be transferred forthwith to the United States District Court for the Northern District of Ohio.

II. Report:

Presently before the Court for disposition is the defendant's motion for change of venue. On May 16, 2008, Dennis Nagle, by his counsel filed a complaint seeking to challenge the defendant's denial of his application for disability and supplemental security income benefits. In his complaint, Nagle states that while he formerly resided in Butler, PA he presently resides in Niles, Ohio.<sup>1</sup> The defendant has now moved for a change of venue and in support thereof cites to 42 U.S.C. 405(g) which provides:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such

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<sup>1</sup> See: Complaint at ¶ 1.

further time as the Commissioner may allow. *Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides ...*(emphasis added).

By Order entered on July 22, 2008, the plaintiff was granted until August 12, 2008, to respond to the instant motion. As of this date no response has been received.

Because it appears as a matter of law that this case should have been brought in the United States District Court for the Northern District of Ohio where the plaintiff resides, and because he has not voiced opposition to this transfer, it is recommended that the defendant's motion for change of venue be granted.

Within thirteen (13) days after being served, any party may serve and file written objections to the Report and Recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,

s/Robert C. Mitchell,  
United States Magistrate Judge

Entered: August 14, 2008